

Employment Court Ruling on employee / contractor

The Employment Court has held that despite an initial agreement between the parties that a builder would be engaged as an independent contractor, he was in reality an employee.

In *Barry v CI Builders Limited*, a verbal agreement suggested that the parties intended to structure their relationship as one of hirer/independent contractor. Despite that agreement, the Court found the "real nature" of the relationship was one of employee/employer. In reaching that conclusion, the Court held that while the mutual intention of the parties or the way they have labelled their relationship will be relevant, neither intention nor labelling were determinative. Rather, both are pieces of a larger "real nature of the relationship" puzzle.

The case follows on from the 2020 decision of *Leota v Parcel Express Limited* (article [here](#)), where a worker was also found to be an employee despite having signed an independent contractor agreement.

In making its decision the Court assessed a number of factors and whether each factor weighed in favour of a contracting arrangement or employment relationship. A considerable number of factors pointed towards the real nature of the relationship between Mr Barry and CIB being one of employment:

- CIB exercised detailed control over the way the work was performed by Mr Barry - he worked under the strict direction and control of the owner and the relevant site manager
- Mr Barry was integrated into CIB's organisation – there was nothing to externally differentiate him from any of the other workers on site
- While there was no express prohibition on Mr Barry working for others this was unrealistic, as he worked on average 40 hours a work continuously, for three years
- Mr Barry was not able to subcontract or delegate his work, and other workers on site had to cover if Mr Barry was not there

- Mr Barry did not invoice CIB, he received wages for time worked, rather than a payment according to task completion
- Mr Barry had a tool belt, which is common for employees in the industry, but did not supply most of his own tools
- Mr Barry bore no risk of loss, and had no opportunity to make a profit
- CIB applied for the wage subsidy during lockdown in respect of Mr Barry as one of its employees
- There was no business to which Mr Barry could accrue any intangible benefit - any goodwill generated by Mr Barry's skill, labour or work ethic accrued to CIB

The Court heard evidence that it is becoming increasingly commonplace for construction businesses, particularly smaller ones, to engage workers on an hourly basis, ostensibly as independent contractors. The Court commented that it is the way in which a relationship operates in practice which will ultimately determine status, not a label that may have routinely been applied within an industry to describe the relationship. The Court referred to the decision in *Leota*, where the Court held that while industry practice may be relevant, it should be approached with caution as it may simply reflect a mistaken understanding as to the actual legal status of some or all of its workers.

The decision will have significant ramifications for CIB in that it allows Mr Barry to now claim any employee related entitlements such as sick leave and holiday pay and also means he can pursue a personal grievance – an avenue not open to a contractor.

It can be tempting for a business to engage a worker as a contractor to avoid the obligations involved with employing an individual. However this case serves as a reminder that simply labelling a worker as an independent contractor will not necessarily mean that is what they are, and a business may still have the responsibilities associated with employing an individual, if they are in reality, an employee.

Want to know more?

If you have any questions, please contact our specialist [Employment](#) Team.